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Attorneys for Defendants
DEPUY ORTHOPAEDICS, INC.; JOHNSON & JOHNSON
SERVICES, INC.; JOHNSON & JOHNSON (erroneously
sued as "Johnson & Johnson, Inc."); DEPUY
INTERNATIONAL LIMITED (erroneously sued as "DePuy
International, Ltd.")

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TATYANA NAKHIMOVSKY,

Plaintiff,

v.

Case No.

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
SECTION 1441(b) (DIVERSITY)**

DEPUY ORTHOPAEDICS, INC.,
JOHNSON & JOHNSON SERVICES,
INC., JOHNSON & JOHNSON, INC.,
DEPUY INTERNATIONAL, LTD.,
THOMAS P. SCHMALZRIED, M.D.,
THOMAS P. SCHMALZRIED, M.D. A
PROFESSIONAL CORPORATION; and
DOES 1 through 20, inclusive,,

JURY TRIAL DEMANDED

Defendants.

Defendants DePuy Orthopaedics, Inc. ("DePuy"), DePuy International Limited, Johnson &
Johnson and Johnson & Johnson Services, Inc. (collectively, "removing defendants"), through
undersigned counsel, hereby remove the state-court action entitled *Tatyana Nakhimovsky v. DePuy
Orthopaedics, Inc. et al.*, Civil Action No. CGC-14-540916, filed in the Superior Court of
California, County of San Francisco. Removal is warranted under 28 U.S.C. § 1441(b) because
this is a diversity action over which the Court has original jurisdiction under 28 U.S.C. § 1332.

1 In support of removal, removing defendants state as follows:

2 1. On or about August 5, 2014, plaintiff commenced this action against the removing
3 defendants, Thomas P. Schmalzried, M.D., Thomas P. Schmalzried, a Professional Corporation
4 (collectively, “Dr. Schmalzried”) and un-named Doe defendants, by filing a complaint in the
5 Superior Court of San Francisco County, in the State of California, bearing case number CGC-14-
6 540916.

7 2. In this action, plaintiff alleges that she suffered various injuries as a result of being
8 implanted with a Pinnacle Acetabular Cup System (“Pinnacle Cup System”) marketed and sold by
9 DePuy. (Compl. ¶¶ 25-31.)

10 3. This is one of more than 7,000 similar cases pending around the country involving
11 personal-injury allegations by plaintiffs who were implanted with a Pinnacle Cup System
12 manufactured by DePuy. On May 23, 2011, the Judicial Panel on Multidistrict Litigation issued
13 an order establishing MDL No. 2244, *In re: DePuy Orthopaedics Inc., Pinnacle Hip Implant*
14 *Products Liability Litigation*, before Judge Ed Kinkeade in the United States District Court for the
15 Northern District of Texas. Removing defendants intend to seek the transfer of this action to that
16 proceeding, and will shortly provide the MDL Panel notice of this action pursuant to the “tag-
17 along” procedure contained in the MDL Rules.

18 4. As set forth more fully below, this case is properly removed pursuant to 28 U.S.C.
19 § 1441, because the Court has subject-matter jurisdiction over it, pursuant to 28 U.S.C. § 1332,
20 and removing defendants have satisfied the procedural requirements for removal.

21 **I. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT-MATTER**
22 **JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441.**

23 5. The Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C.
24 §§ 1332 and 1441 because this is a civil action in which the amount in controversy exceeds the
25 sum of \$75,000, exclusive of costs and interest, and is between citizens of different States.

26 **A. Complete Diversity Of Citizenship**

27 6. Plaintiff is a citizen of the State of California. (Compl. ¶ 2.)
28

1 7. DePuy is, and was at the time plaintiff commenced this action, a corporation
2 organized under the laws of the State of Indiana with its principal place of business in Warsaw,
3 Indiana, and is therefore a citizen of the State of Indiana for purposes of determining diversity. 28
4 U.S.C. § 1332(c)(1).

5 8. DePuy International Limited is, and was at the time plaintiff commenced this
6 action, a corporation organized under the laws of the United Kingdom with its principal place of
7 business in Leeds, England, and is therefore a citizen of the United Kingdom for purposes of
8 determining diversity. 28 U.S.C. § 1332(c)(1).

9 9. Johnson & Johnson and Johnson & Johnson Services, Inc. are, and were at the time
10 plaintiff commenced this action, corporations organized under the laws of the State of New Jersey
11 with their principal places of business in New Brunswick, New Jersey, and are therefore citizens
12 of the State of New Jersey for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

13 10. Dr. Schmalzried and his professional corporation are citizens of the State of
14 California. (Compl. ¶¶ 7-8.)

15 11. Plaintiff also names numerous “Doe” defendants, whose citizenship is disregarded
16 for purposes of removal. 28 U.S.C. § 1441(b)(1).

17 12. Thus, plaintiff is diverse from all defendants except Dr. Schmalzried.

18 13. Dr. Schmalzried’s presence in the case does not defeat diversity jurisdiction,
19 however, because he was fraudulently joined. Under the fraudulent-joinder doctrine, a court
20 should disregard the citizenship of a defendant where, as here, there is “no possibility that the
21 plaintiff will be able to establish a cause of action in state court against the alleged sham
22 defendant.” *Taylor v. Jeppesen DataPlan, Inc.*, No. C 10-1920 SBA, 2010 U.S. Dist. LEXIS
23 106160, at *5 (N.D. Cal. Sept. 27, 2010) (internal quotation marks and citation omitted); *see also*
24 *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).

14. That is precisely the case here. Although plaintiff alleges claims against Dr. Schmalzried for strict liability, negligence, fraud and negligent misrepresentation,¹ there is no possibility that these claims would succeed under California law.

15. **First**, there is no possibility that plaintiff would prevail on any of her claims against Dr. Schmalzried because claims like plaintiff's – which rest on either a failure-to-warn theory or a defective-design theory – are preempted when they are brought against *non-manufacturers* of an FDA-approved product. See *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567, 2581 (2011); *Mutual Pharm. Co. v. Bartlett*, 133 S. Ct. 2466 (2013); see also Decl. of Dr. Thomas P. Schmalzried (“Schmalzried Decl.”) ¶ 2, *Sanchez v. DePuy Orthopaedics, Inc.*, No. CV 11-7867 (C.D. Cal.) (attached as Ex. 1) (attesting that Dr. Schmalzried “played no role in the manufacturing, packaging, labeling, regulatory submissions, sales, inspection, distribution, and adverse event and complaint reporting, handling or tracking for the Pinnacle Cup System”).

16. In *Mensing*, the U.S. Supreme Court ruled that all claims against generic drug manufacturers that were premised on a failure to warn are preempted by federal law based on the principle of impossibility preemption. 131 S. Ct. at 2581. According to the Supreme Court, generic manufacturers cannot be found liable on a failure-to-warn theory because generic manufacturers have no power to unilaterally effectuate a label change; rather, they must use the same labels and warnings as those approved by the FDA with respect to the brand-name version of the drug. *Id.* at 2575-76. Thus, as long as the labels and warnings for the generic form of the drug match the labels and warnings that the FDA has approved for the brand-name form of the drug, generic manufacturers cannot as a matter of law be held liable under state tort law for failing to warn.

17. Although *Mensing* involved failure-to-warn claims, the Supreme Court has reached a similar conclusion as to product-design claims as well. In *Bartlett*, the Supreme Court held that a generic manufacturer could not “legally make [the relevant product] in another composition”

¹ Plaintiff also asserts claims for alleged breach of warranty, but not against Dr. Schmalzried. (See Compl. ¶¶ 60-70.)

under the Federal Food, Drug, and Cosmetic Act (“FDCA”). *Bartlett*, 133 S. Ct. at 2475 (internal quotation marks and citation omitted). As the Court explained, “the FDCA requires a generic drug to have the same active ingredients, route of administration, dosage form, strength, and labeling as the brand-name drug on which it is based.” *Id.* (citing 21 U.S.C. §§ 355(j)(2)(A)(ii)-(v) and (8)(B); 21 C.F.R. § 320.1(c)). Because it was “not possible” for the generic manufacturer defendant in *Bartlett* to “redesign” the product at issue to make it more useful or less risky, the Court concluded that causes of action based on a defective design are likewise preempted. *See id.*; *see also Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 187 (5th Cir. 2012) (“[W]e are persuaded that [plaintiff’s] design defect claim [against generic manufacturer] would be preempted [under *Mensing*].”), *cert. denied*, 134 S. Ct. 57 (2013); *Gardley-Starks v. Pfizer, Inc.*, 917 F. Supp. 2d 597, 611 (N.D. Miss. 2013) (design-defect claims “are also preempted”); *In re Pamidronate Prods. Liab. Litig.*, 842 F. Supp. 2d 479, 484 (E.D.N.Y. 2012) (“the ‘federal duty of sameness,’ also applies in the context of generic drug design”) (internal quotation marks and citations omitted).

18. As other courts have found, these principles apply in spades to non-manufacturing defendants such as Dr. Schmalzried. After all, these defendants have “no authority” to effectuate changes to the product or its labeling either. *See, e.g., In re Fosamax Prods. Liab. Litig.*, MDL No. 2243 (JAP-LHG), No. 3:08-cv-00008-JAP-LHG, 2012 U.S. Dist. LEXIS 5817, at *26-28 (D.N.J. Jan. 17, 2012) (because a distributor “ha[d] no authority to initiate a labeling change” and “no power to unilaterally change Fosamax labeling,” it “could not independently do under federal law what state law requires of it”); *see also Stevens v. Cmty. Health Care, Inc.*, No. ESCV200702080, 2011 WL 6379298, at *1 (Mass. Super. Ct. Oct. 5, 2011) (“As a distributor, however, [the defendant] had no ability to change labeling or warnings and thus, like a generic manufacturer, [it] cannot be subject to liability in connection with a state law claim premised on a ‘failure to warn.’”).

19. In *In re Fosamax*, for example, the court granted a distributor’s motion for judgment on the pleadings after finding that the plaintiffs’ state-law claims were preempted. 2012 U.S. Dist. LEXIS 5817, at *26-28. The plaintiffs in *Fosamax* asserted a number of claims against

1 “the authorized distributor of branded Fosamax” that “emanated from a general theory of failure to
 2 warn,” including “defective design, negligence, fraud, misrepresentation, breach of express and
 3 implied warranties, violation of consumer protection statutes, restitution, and loss of consortium.”
 4 *Id.* at *20-21. In rejecting the plaintiffs’ claims, the district court ruled that “[a]s a distributor of
 5 Fosamax, [the distributor] ha[d] no power to change Fosamax labeling.” *Id.* at *27. According to
 6 the court, “[t]hat power lies with the applicant who . . . seek[s] approval to market Fosamax” – in
 7 that case, Merck. *Id.* at *27. Additionally, the court noted that if the FDA had become aware of
 8 new safety information in connection with Fosamax use that it believed should be included in the
 9 labeling, the FDA would have notified Merck – not the distributor. *Id.* Because the distributor
 10 “ha[d] no authority to initiate a labeling change” and “no power to unilaterally change Fosamax
 11 labeling,” it “could not independently do under federal law what state law requires of it.” *Id.* at
 12 *28 (citing *Mensing*, 131 S. Ct. at 2579) (internal quotation marks omitted). Accordingly, the
 13 court found that “the state law claims brought against [the distributor] [were] preempted.” *Id.*

14 20. Here, all of plaintiff’s claims against Dr. Schmalzried rest on either a failure-to-
 15 warn theory or a defective-design theory. Because Dr. Schmalzried had “no power to unilaterally
 16 change” either the design of the FDA-regulated Pinnacle Cup System or the warnings that
 17 accompanied it, all of plaintiff’s claims against him are preempted.² For this reason alone, there is
 18 no possibility plaintiff would prevail on any of her claims against Dr. Schmalzried, and he is
 19 fraudulently joined.

20 21. **Second**, even absent preemption, plaintiff’s claims against Dr. Schmalzried would
 21 have no chance of success under California law.

22
 23
 24 ² Plaintiff’s failure-to-test theory is nothing more than a failure-to-warn theory in disguise
 25 and is thus barred by *Mensing* too. See *Gross v. Pfizer, Inc.*, 825 F. Supp. 2d 654, 659 (D. Md.
 26 2011) (“Plaintiff contends that her allegation that PLIVA failed to test and inspect its products
 27 survives *Mensing*. The Court fails to see how these allegations are but a piece of Plaintiff’s larger
 28 failure to warn claims. Accordingly, *Mensing* preempts these allegations as they relate to
 Plaintiff’s failure to warn claims.”), *aff’d sub nom. Drager v. PLIVA USA, Inc.*, 741 F.3d 470 (4th
 Cir. 2014).

1 22. **Strict Liability.** Plaintiff's strict-liability claim against Dr. Schmalzried has no
 2 chance of success. Although California allows application of strict-liability theories to
 3 participants outside the chain of distribution, the circumstances under which such liability is
 4 permitted are extremely narrow. In *Bay Summit Community Ass'n v. Shell Oil Co.*, the court
 5 articulated a three-part test for strict-liability claims against a non-manufacturing, non-distributing
 6 defendant:

7 (1) the defendant received a direct financial benefit from its
 8 activities and from the sale of the product; (2) the defendant's role
 9 was integral to the business enterprise such that the defendant's
 10 conduct was a necessary factor in bringing the product to the initial
 11 consumer market; and (3) the defendant had control over, or a
 12 substantial ability to influence, the manufacturing or distribution
 13 process.

14 51 Cal. App. 4th 762, 776 (1996). The court went on to explain that the fact that "an entity was a
 15 link in the chain of getting goods to the market or that it participat[ed] in marketing a defective
 16 product is not enough to establish the defendant should be held strictly liable." *Id.* at 778 (internal
 17 quotation marks and citation omitted); *see also Taylor v. Elliott Turbomachinery Co.*, 171 Cal.
 18 App. 4th 564, 576 (2009) (a claim for strict liability failure to warn arises only where a plaintiff
 19 can prove, *inter alia*, that "the defendant had control over, or a substantial ability to influence, the
 20 manufacturing or distribution process"). After all, and as other California courts have held,
 21 "[t]here is, implicit in the strict liability standard, a requirement that the defendant have some
 22 ability to control the manufacturing or distribution of the product." *Bruce v. Clark Equip. Co.*,
 23 No. Civ. S-05-01766 WBS KJM, 2007 U.S. Dist. LEXIS 25331, at *11 (E.D. Cal. Mar. 26, 2007);
 24 *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680, 687-88 (1969) (holding that strict liability
 25 "should not be extended . . . to a general endorser" that was not "involved in manufacturing
 26 products for, or supplying products to, the consuming public").

27 23. Here, plaintiff has not alleged that Dr. Schmalzried controlled, or had any ability to
 28 control, the manufacturing or distribution of the product. Nor could he. As set forth in the
 attached declaration, Dr. Schmalzried "played no role in the manufacturing, packaging, labeling,
 regulatory submissions, sales, inspection, distribution, and adverse event and complaint reporting,

1 handling or tracking for the Pinnacle Cup System.” *See* Schmalzried Decl. ¶ 2. Accordingly,
2 there is no reasonable possibility that plaintiff can prevail on her strict-liability claims against Dr.
3 Schmalzried.

4 24. In addition, plaintiff’s design-defect strict-liability claim against Dr. Schmalzried
5 (Compl. ¶ 36(a)) is also barred because, under California law, “the entire category of medical
6 implants available only by resort to the services of a physician are immune from design defect
7 strict liability.” *Artiglio v. Superior Court*, 22 Cal. App. 4th 1388, 1397 (1994); *see also Hufft v.*
8 *Horowitz*, 4 Cal. App. 4th 8, 19 (1992) (“As with prescription drugs, the harsher rule of strict
9 liability may discourage manufacturers from researching and marketing new medical devices due
10 to realistic fear of substantial adverse judgments, the high cost of strict liability insurance and the
11 uncertainty that such insurance will even be available. . . . Public interest is served, rather than
12 thwarted, by relieving the manufacturer of strict liability for injuries resulting from implanted
13 medical devices that have been properly fabricated and marketed.”). There is no contention
14 anywhere in plaintiff’s complaint that her Pinnacle Cup System was obtained other than by the
15 services of a physician.

16 25. Finally, failure to adequately test (Compl. ¶ 36(c)) is not a recognized theory of
17 strict liability under California law. *See Kennedy v. S. Cal. Edison Co.*, 268 F.3d 763, 771 (9th
18 Cir. 2001) (“This doctrine of strict liability extends to products which have design defects,
19 manufacturing defects, or warning defects.”); *Currier v. Stryker Corp.*, No. 2:11-CV-1203 JAM-
20 EFB, 2011 U.S. Dist. LEXIS 118408, at *5 (E.D. Cal. Oct. 13, 2011) (same); *Artiglio*, 22 Cal.
21 App. 4th at 1392 (same).

22 26. For these reasons too, plaintiff’s strict-liability claims against Dr. Schmalzried have
23 zero likelihood of success.

24 27. **Negligence.** Plaintiff’s claim for negligence against Dr. Schmalzried is similarly
25 destined to fail because plaintiff cannot establish that Dr. Schmalzried owed any independent duty
26 to her. As set forth in the attached declaration, Dr. Schmalzried was merely one of eight surgeons
27 selected by DePuy to provide advice during the development of the Pinnacle Cup System. *See*
28 Schmalzried Decl. ¶ 3. He had no role in the manufacture or sale of the device. *Id.* ¶ 2. However,

1 no duty arises from “being the developer, inventor, or patent holder of a product or design.”
2 *Murphy v. Aventis Pasteur, Inc.*, 270 F. Supp. 2d 1368, 1376-77 (N.D. Ga. 2003); *see also*
3 *Weseloh Family Ltd. P’ship v. K.L. Wessel Constr. Co.*, 125 Cal. App. 4th 152, 164 (2004) (design
4 engineers could not be held liable for general negligence because they owed no duty of care to
5 plaintiff property owners; courts have “invoked the concept of duty to limit [] the otherwise
6 potentially infinite liability which would follow from every negligent act”); *In re Rezulin Litig.*,
7 No. CV 03-1643-R(RZX), 2003 WL 25598915, at *1 (C.D. Cal. Apr. 28, 2003) (holding that a
8 patent holder and clinical investigator of an allegedly defective prescription drug was fraudulently
9 joined because he “owed no legal duty to any of the plaintiffs, and therefore, there [was] no
10 possibility that the plaintiffs [could] prove a cause of action against [him]”).

11 28. These rulings make good sense. Otherwise, every individual who had any role in
12 the design of any component of any product, such as a vehicle, would potentially be liable for
13 negligence any time an individual was injured using it. Such an approach would result in limitless
14 liability for millions of Americans who work in any capacity in which they provide input into the
15 design or manufacturing of any product. Accordingly, our legal system limits liability to the
16 actual manufacturer of a product, which has a duty of care to those who buy its products. *See*
17 *Morrow v. Wyeth*, No. B-05-209, 2005 U.S. Dist. LEXIS 43194, at *13-14 (S.D. Tex. Oct. 13,
18 2005) (noting that the law places liability on the manufacturer of an allegedly defective product,
19 not on the specific individuals involved in the design and manufacture of the product). For this
20 reason too, Dr. Schmalzried is fraudulently joined.

21 29. **Fraud-Based Claims.** Plaintiff’s claims against Dr. Schmalzried for fraud and
22 negligent misrepresentation (collectively, plaintiff’s “fraud-based claims”) fail for two reasons:
23 (1) plaintiff does not identify a single statement made by Dr. Schmalzried that was allegedly
24 deceptive; and (2) plaintiff fails to establish any connection between any actions by Dr.
25 Schmalzried and her implantation with the Pinnacle Cup System that could possibly satisfy the
26 reliance/causation elements of her fraud-based claims.

27 30. Causes of action for both intentional and negligent misrepresentation require a
28 plaintiff to prove, *inter alia*, that the defendant engaged in a misrepresentation and that the

1 plaintiff relied on it. *See, e.g., Young v. Fluorotronics, Inc.*, No. 10cv976-WQH-BGS, 2010 U.S.
 2 Dist. LEXIS 117362, at *22-23 (S.D. Cal. Nov. 3, 2010) (“[t]he . . . elements of a cause of action
 3 for [intentional misrepresentation] are: (1) a misrepresentation, which includes a concealment or
 4 nondisclosure; (2) knowledge of the falsity of the misrepresentation, i.e., scienter; (3) intent to
 5 induce reliance on the misrepresentation; (4) justifiable reliance; and (5) resulting damages”);
 6 *Nat’l Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Serv. Grp., Inc.*, 89 Cal. Rptr.
 7 3d 473, 483 (Cal. Ct. App. 2009) (“The elements of negligent misrepresentation are (1) the
 8 misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it
 9 to be true, (3) with intent to induce another’s reliance on the fact misrepresented, (4) justifiable
 10 reliance on the misrepresentation, and (5) resulting damage”) (internal quotation marks and
 11 citation omitted).

12 31. Importantly, the “mere assertion of reliance is insufficient” to support fraud-based
 13 claims; rather, a “plaintiff must allege the specifics of his or her reliance on the representation to
 14 show a bona fide claim of actual reliance.” *Cadlo v. Owens-Illinois, Inc.*, 125 Cal. App. 4th 513,
 15 520 (2004). This is particularly true because the elements of plaintiff’s fraud-based claims must
 16 be alleged with the specificity required under Federal Rule of Civil Procedure 9(b). *See, e.g.,*
 17 *Baltazar v. Apple, Inc.*, No. CV-10-3231-JF, 2011 WL 588209, at *3 (N.D. Cal. Feb. 10, 2011)
 18 (holding that plaintiff must satisfy the pleading requirements of Rule 9(b) in order to state a claim
 19 for negligent misrepresentation); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales*
 20 *Practices, & Prods. Liab. Litig.*, 826 F. Supp. 2d 1180, 1204 (C.D. Cal. 2011) (granting motion to
 21 dismiss UCL claims where plaintiffs failed to meet the heightened pleading requirements of Rule
 22 9(b)); *BBG Props., Inc. v. Eaton*, 342 F. App’x 919, 920 (5th Cir. 2009) (affirming trial court’s
 23 refusal to remand case to state court where the plaintiff “had not stated its fraud claim with
 24 sufficient particularity” as required by Rule 9(b)).

25 32. Here, plaintiff has not identified any specific statements that Dr. Schmalzried
 26 allegedly made to her (or her doctors) regarding the safety or efficacy of the Pinnacle Cup System.
 27 Nor has she alleged that she (or her doctors) relied on any such statements in selecting the
 28 Pinnacle Cup System. For both of these reasons, there is no “possibility” that plaintiff can recover

1 against Dr. Schmalzried on her negligent-misrepresentation and fraud claims. *See, e.g., Aronis v.*
2 *Merck & Co.*, No. CIV. S-05-0486 WBS DAD, 2005 WL 5518485, at *1 (E.D. Cal. May 3, 2005)
3 (finding fraudulent joinder of a distributor where “plaintiff d[id] not allege that [the distributor]
4 contributed in any way to her injuries”; “[t]o state a claim against a defendant, a plaintiff must
5 allege a causal connection between the injury and the conduct of that defendant”); *BBG Props.*,
6 342 F. App’x at 920 (affirming trial court’s refusal to remand case to state court where the plaintiff
7 “had not stated its fraud claim with sufficient particularity” with regard to the non-diverse
8 defendant as required under Rule 9(b)); *Druker v. Fortis Health*, No. 5:06-cv-00052, 2007 U.S.
9 Dist. LEXIS 402, at *11-13 (S.D. Tex. Jan. 4, 2007) (finding fraudulent joinder where the plaintiff
10 “failed to lodge any meaningful factual allegations” and did not allege specific material
11 misrepresentations upon which he relied as required by Rule 9(b)).

12 33. For all of these reasons, there is no possibility plaintiff would prevail on any of her
13 claims against Dr. Schmalzried; accordingly, Dr. Schmalzried is fraudulently joined.

14 **B. Amount In Controversy**

15 34. Plaintiff claims that she has suffered “severe pain” (Compl. ¶ 26) and “severe and
16 possibly permanent injuries, pain, suffering and emotional distress” (*id.* ¶ 31). Plaintiff seeks
17 actual damages, including “[p]ast and future lost wages, medical and incidental expenses” and
18 punitive damages. (*See id.*, Prayer For Relief.)

19 35. It is widely recognized that personal-injury claims facially meet the \$75,000
20 jurisdictional threshold. *See, e.g., In re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 296
21 (S.D.N.Y. 2001) (finding that a complaint alleging various injuries from taking a prescription drug
22 “obviously asserts a claim exceeding \$75,000”). In addition, compensatory and punitive damages
23 in excess of the jurisdictional amount of \$75,000 have been awarded in product-liability cases in
24 California. *See, e.g., Stewart v. Union Carbide Corp.*, 190 Cal. App. 4th 23 (2010); *Karlsson v.*
25 *Ford Motor Co.*, 140 Cal. App. 4th 1202 (2006); *Jones v. John Crane, Inc.*, 132 Cal. App. 4th 990
26 (2005).

27 36. Other federal courts have similarly concluded that the amount in controversy
28 exceeded \$75,000 in pharmaceutical cases. *See, e.g., Smith v. Wyeth, Inc.*, 488 F. Supp. 2d 625,

1 630-31 (W.D. Ky. 2007) (denying motion to remand); *Copley v. Wyeth, Inc.*, No. 09-722, 2009
2 WL 1089663 (E.D. Pa. Apr. 22, 2009) (same).

3 37. Given plaintiff's claim that she has suffered "severe and possibly permanent
4 injuries, pain, suffering and emotional distress" and her request for punitive damages, it is evident
5 that the amount of recovery sought by plaintiff exceeds \$75,000.

6 **II. REMOVING DEFENDANTS HAVE SATISFIED THE PROCEDURAL**
7 **REQUIREMENTS FOR REMOVAL.**

8 38. DePuy, Johnson & Johnson and Johnson & Johnson Services, Inc. were each
9 served with plaintiff's Complaint on October 13, 2014. DePuy International Limited was served
10 on October 16, 2014. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C.
11 § 1446(b).

12 39. The Superior Court of San Francisco County is located within the Northern District
13 of California. *See* 28 U.S.C. § 84.

14 40. None of the removing defendants is a citizen of the State of California, the State
15 where this action was brought. *See* 28 U.S.C. § 1441(b).

16 41. It is well settled that co-defendants who are fraudulently joined need not join in the
17 removal. *See Borsuk v. Mass. Mut. Life Ins. Co.*, No C 03-630 VRW, 2003 U.S. Dist. LEXIS
18 25259, at *7-8 (N.D. Cal. Sept. 4, 2003). As set forth above, Dr. Schmalzried is fraudulently
19 joined. *See* Section I.A, above. Therefore, he need not consent to removal.

20 42. No previous application has been made for the relief requested herein.

21 43. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served
22 upon removing defendants, which papers include the complaint, are attached collectively as
23 Exhibit 2.

24 44. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served
25 upon counsel for plaintiff and a copy is being filed with the Clerk of the Superior Court of the
26 County of San Francisco.

1 WHEREFORE, removing defendants respectfully remove this action from the Superior
2 Court of the County of San Francisco, in the State of California, bearing Number CGC-14-
3 540916, to this Court.

4 Respectfully submitted,

5 Dated: November 12, 2014

BARNES & THORNBURG LLP

6
7 By: 

Alexander G. Calfo
Kelley S. Olah
Gabrielle Anderson-Thompson
Attorneys for Defendants
DEPUY ORTHOPAEDICS, INC.;
JOHNSON & JOHNSON SERVICES,
INC.; JOHNSON & JOHNSON
(erroneously sued as "Johnson & Johnson,
Inc."); DEPUY INTERNATIONAL
LIMITED (erroneously sued as "DePuy
International, Ltd.")

EXHIBIT 1

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11 michael.walsh@sedgwicklaw.com
12 Attorneys for Defendant
13 THOMAS P. SCHMALZRIED, M.D.

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13 ARMAND SANCHEZ, et al.,

14 Plaintiffs,

15 vs.

16 DEPUY ORTHOPAEDICS, INC., et
17 al.,

18 Defendants.

CASE NO. CV 11-7867

**DECLARATION OF DR. THOMAS
P. SCHMALZRIED**

Judge: Hon. Jacqueline H. Nguyen

19 CATHERINE SHELTON,

20 Plaintiff,

21 vs.

22 DEPUY ORTHOPAEDICS, INC., et
23 al.,

24 Defendants.

CASE NO. 2:11-cv-08082

**DECLARATION OF DR. THOMAS
P. SCHMALZRIED**

Judge: Hon. Dean D. Pregerson

25 Decl. of Dr. Thomas P. Schmalzried

1 I, THOMAS P. SCHMALZRIED, pursuant to 28 U.S.C. § 1746, hereby
2 declare under penalty of perjury that the following statements are true and correct, to
3 the best of my knowledge and belief:
4

5 1. I am a practicing orthopedic surgeon and the Medical Director of the Joint
6 Replacement Institute in Los Angeles, California. I am also the principal for Thomas
7 P. Schmalzried, M.D., A Professional Corporation, a California corporation.
8

9 2. I played no role in the manufacturing, packaging, labeling, regulatory
10 submissions, sales, inspection, distribution, and adverse event and complaint
11 reporting, handling or tracking for the Pinnacle Cup System. I had no control or
12 influence over DePuy's manufacturing, packaging, labeling, regulatory, sales,
13 inspection, distribution and adverse event and complaint reporting, handling or
14 tracking decisions regarding the Pinnacle Cup System.
15
16

17 3. I was one of eight surgeons selected by DePuy who provided assistance to
18 DePuy with the design of the Pinnacle Cup System. DePuy determined the final
19 design specifications for the Pinnacle Cup System and the product labeling content.
20

21 4. The DePuy brochure, "Advancing High Stability and Low Wear" was created
22 by DePuy. My only contribution to this brochure was a general educational
23 summary (including references to thirty four scientific and medical articles as
24 support for the data in this summary), written at the request of DePuy, entitled "High
25 Stability, Low Wear Metal-on-Metal Bearings: Benefits, Risks, and Alternatives."
26
27

28 Decl. of Dr. Thomas P. Schmalzried

1 As the title reflects, this paper discusses the benefits, risks and alternatives to metal-
2 on-metal bearings. The paper clearly outlines the special risks associated with all
3 metal-metal bearings, and states my belief that "there is insufficient clinical data to
4 demonstrate the overall superiority of any single bearing couple for all total hip
5 patients" and "it is therefore reasonable to individualize the choice of bearing." The
6 only Pinnacle-specific data in this educational paper was provided by DePuy and
7 clearly labeled as "DePuy Internal Data."
8

10 5. I was not a part of DePuy's internal complaint handling system for the
11 Pinnacle Cup System and thus was not notified if DePuy received such complaints.
12

13 6. I have never made any representations or statements to any physicians, or to
14 any member of the public, including plaintiff, regarding whether a specific DePuy
15 orthopedic implant product was suitable for any specific patient. That is a decision
16 made by the patient's physician and not by me.
17

18 I declare under penalty of perjury that the foregoing is true and correct.
19

20 Executed on 10 / 27, 2011.

21
22 
23 THOMAS P. SCHMALZRIED, M.D.
24
25
26
27
28

Decl. of Dr. Thomas P. Schmalzried

EXHIBIT 2

OCT 15 2014

SUM-100

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

DePuy Orthopaedics, Inc.; Johnson & Johnson Services, Inc.; Johnson & Johnson, Inc., DePuy International, Ltd. (continued)

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Tatyana Nakhimovsky

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street, S.F., CA 94102CASE NUMBER
(Número del caso)

14-540916

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kenneth M. Seeger, Seeger Salvas LLP, 455 Market Street, Suite 1530, S.F., CA 94105 (415) 981-9260DATE
(Fecha)

AUG 05 2014

CLERK OF THE COURT

Clerk, by
(Secretario)

D. STEPPE

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): Johnson & Johnson Services, Inc.
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☒ other (specify): CCP § 415.40
- ☐ by personal delivery on (date):

SUM-200(A)

SHORT TITLE:

Nakhimovsky v. DePuy Orthopaedics, Inc. et al.

CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

Thomas P. Schmalzried, M.D.

Thomas P. Schmalzried, M.D. A Professional Corporation

Does 1 through 20

Page 2 of 2

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kenneth M. Seeger (C.S.B.N. 135862) Seeger Salvas LLP 455 Market Street, Suite 1530 San Francisco, CA 94105 TELEPHONE NO.: (415) 981-92690 FAX NO.: (415) 981-9266 ATTORNEY FOR (Name): Plaintiff Tatyana Nakhimovsky		ENDORSED CM-010 FOR COURT USE ONLY SUPERIOR COURT 2014 AUG -5 AM 10:39 D. STEPPE		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:				
CASE NAME: Nakhimovsky v. DePuy Orthopaedics, Inc.				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> <td style="width: 50%; padding: 5px;"> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> </table>			CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)			

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input checked="" type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Six
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 4, 2014
 Adam R. Salvas

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CASE NUMBER: CGC-14-540916 TATYANA NAKHIMOVSKY VS. DEPUY ORTHOPAEDICS, II

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: JAN-07-2015

TIME: 10:30AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.10. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.

1 Kenneth M. Seeger (State Bar No. 135862)
 2 Adam R. Salvas (State Bar No. 191379)
 3 Brian J. Devine (State Bar No. 215198)
 SEEGER • SALVAS LLP
 4 455 Market Street, Suite 1530
 San Francisco, CA 94105

5 Telephone: (415) 981-9260
 6 Facsimile: (415) 981-9266

7 Attorneys for Plaintiff
 Tatyana Nakhimovsky

Date Served: 10/13/14

Company Served: JS SVCS

☒ Certified ☐ CT ☐ Personal ☐ Reg. Mail ☐ FEDEX ☐ NP

Date Rec'd by Law Dept: 10/15/14

Entered into TeamConnect ☒ Yes ☐ No

Matter ID #: 2014013080

ENDORSED
 FILED
 SAN FRANCISCO COUNTY
 SUPERIOR COURT
 2014 AUG -5 4:10:39

D. STEPPE

8 SUPERIOR COURT OF CALIFORNIA
 9 FOR THE CITY AND COUNTY OF SAN FRANCISCO

10
 11 TATYANA NAKHIMOVSKY,

12 Plaintiff,

13 vs.

14 DEPUY ORTHOPAEDICS, INC.,
 15 JOHNSON & JOHNSON SERVICES,
 INC., JOHNSON & JOHNSON, INC.,
 16 DEPUY INTERNATIONAL, LTD.,
 THOMAS P. SCHMALZRIED, M.D.,
 THOMAS P. SCHMALZRIED, M.D. A
 17 PROFESSIONAL CORPORATION; and
 DOES 1 through 20, inclusive,

18 Defendants.
 19
 20
 21

No. CCC-14-540916

COMPLAINT FOR:

- (1) STRICT PRODUCT LIABILITY,
- (2) NEGLIGENCE,
- (3) FRAUD
- (4) NEGLIGENT MISREPRESENTATION
- (5) BREACH OF IMPLIED WARRANTIES,
- (6) BREACH OF EXPRESS WARRANTY

JURY TRIAL DEMANDED

22 1. This is a product liability case involving a defective hip implant system.

23 Plaintiff Tatyana Nakhimovsky had a Pinnacle Hip System¹ implanted in her left hip. The
 24 Pinnacle Hip System suffers from defects that cause excessive amounts of cobalt and chromium
 25 to wear from the surface of the acetabular insert and from the femoral head, which in turn causes
 26 the hip implant to fail and the surrounding tissue and bone to die. As a result of these defects,

27 ¹ The Pinnacle Hip Systems that were implanted in Ms. Nakhimovsky were comprised of an acetabular cup, a metal-
 28 on-metal insert, a metal-on-metal femoral head, and a femoral stem.

1 Ms. Nakhimovsky's Pinnacle Hip Systems failed in her body, causing excessive and toxic levels
2 of cobalt and chromium, tissue and bone destruction, and pain and suffering that required Ms.
3 Nakhimovsky to undergo a complicated and risky surgery to remove and replace the defective
4 implant.

5
6 PARTIES

7
8 2. Plaintiff Tatyana Nakhimovsky is a citizen of the State of California and
9 resides in San Francisco, California.

10
11 3. On information and belief, Defendant DePuy Orthopaedics, Inc. ("DePuy")
12 is a corporation organized and existing under the laws of Indiana with its primary place of
13 business in Warsaw, Indiana. DePuy developed, manufactured, advertised, promoted, marketed,
14 sold and/or distributed the Pinnacle Hip System that is the subject of this lawsuit.

15
16 4. On information and belief, Defendant Johnson & Johnson, Inc. ("J&J") is a
17 corporation organized and existing under the laws of New Jersey with its primary place of
18 business in New Brunswick, New Jersey. J&J developed, manufactured, advertised, promoted,
19 marketed, sold and/or distributed the Pinnacle Hip System that is the subject of this lawsuit.

20
21 5. On information and belief, Defendant Johnson & Johnson Services, Inc.
22 ("JJSI") is a corporation organized and existing under the laws of New Jersey with its primary
23 place of business in New Brunswick, New Jersey. JJSI developed, manufactured, advertised,
24 promoted, marketed, sold and/or distributed the Pinnacle Hip System that is the subject of this
25 lawsuit.

1 6. On information and belief, Defendant DePuy International, Ltd. ("DIL") is
2 a corporation organized under the laws of the United Kingdom with its primary place of business
3 in Leeds, England. DIL developed, manufactured, advertised, promoted, marketed, sold and/or
4 distributed the Pinnacle Hip System that is the subject of this lawsuit.

5
6 7. On information and belief, Defendant Thomas Schmalzried
7 ("Schmalzried") is a citizen and resident of the State of California and he resides in Los Angeles.
8 His involvement in this case is described in detail in the following paragraph.

9
10 8. On information and belief, Defendant Thomas P. Schmalzried, M.D. A
11 Professional Corporation ("TPS Corp.") is a corporation organized and existing under the laws of
12 California with its primary place of business in Los Angeles, California. Thomas P. Schmalzried,
13 M.D. is believed to be the sole shareholder and employee of TPS Corp. TPS Corp. and
14 Schmalzried designed the Pinnacle Hip System hip implants that are the subject of this lawsuit.
15 TPS Corp. and Schmalzried collect royalties for each hip implant sold, and in the last two years
16 alone, they have collected more than \$3.4 million in such royalty payments. In addition to
17 designing the Pinnacle Hip System hip implants that were implanted in Ms. Nakhimovsky and
18 collecting royalties for the sale of Ms. Nakhimovsky's implants, TPS Corp. and Schmalzried
19 were actively involved in promoting and marketing the Pinnacle Hip System hip implant. TPS
20 Corp., by and through its shareholder, director, and officer, Dr. Thomas Schmalzried, was a
21 "product champion" for the Pinnacle Hip System. In the orthopedics community, a "product
22 champion" uses the reputation as a prominent orthopedic surgeon to encourage other orthopedic
23 surgeons to use a particular orthopedic implant. In his role as a "product champion" for the
24 Pinnacle Hip System, Dr. Schmalzried, on behalf of TPS Corp., induced the sale of Ms.
25 Nakhimovsky's implant by making representations to orthopedic surgeons, including Ms.
26 Nakhimovsky's orthopedic surgeon, that the Pinnacle Hip System was safe and effective. As a
27 product champion for the Pinnacle Hip System, Schmalzried and TPS Corp. also played an
28

SEEGER • SALVAS LLP

1 integral role in DePuy's sale of the Pinnacle Hip System to Ms. Nakhimovsky. DePuy could not
2 have sold the Pinnacle Hip System without the endorsement of Schmalzried, and Schmalzried's
3 design and promotion of the implants were necessary factors in bringing the products to the
4 market. Given their prominent and necessary role as a product designer and product champion,
5 Schmalzried and TPS Corp. also had a substantial ability to influence DePuy's manufacturing and
6 distribution process. For example, if Schmalzried believed that a change should be made to the
7 design, manufacturing process, or warnings that accompanied the Pinnacle Hip System, DePuy
8 would have been required to make these changes otherwise it would have lost Schmalzried's
9 endorsement and would not have been able to sell the hip implant. Although TPS Corp. and
10 Schmalzried had the ability to change the design and manufacturing specifications of the Pinnacle
11 Hip System, they failed to do so after they learned that the product was defective. TPS Corp. and
12 Schmalzried knew or should have known about defects in the Pinnacle Hip System at the time
13 these products were sold to and implanted in Ms. Nakhimovsky. Despite this knowledge,
14 Schmalzried and TPS Corp. did not disclose that information to Ms. Nakhimovsky or her doctors.
15 Schmalzried and TPS Corp. had full knowledge of each report of failure of the Pinnacle Hip
16 System. As reports of failures of the Pinnacle Hip System mounted, Schmalzried and TPS Corp.
17 conspired with the other Defendants in this action to conceal this information from patients and
18 orthopedic surgeons, including Ms. Nakhimovsky's orthopedic surgeons, and to deflect blame for
19 the growing problems with the implants. Despite a legal duty to disclose information about the
20 defects of which Schmalzried and TPS Corp. were aware to Ms. Nakhimovsky and her doctors,
21 Schmalzried and TPS Corp. instead actively concealed these known defects and they instead
22 deflected blame for the mounting failures by blaming the surgical technique of the implanting
23 orthopedic surgeon. To this day, Schmalzried and TPS Corp. continue to conspire with the other
24 Defendants in this action to conceal the true information about the defects in the Pinnacle Hip
25 System, and Schmalzried and TPS Corp. continue their aggressive promotion of the defective
26 Pinnacle Hip System.
27
28

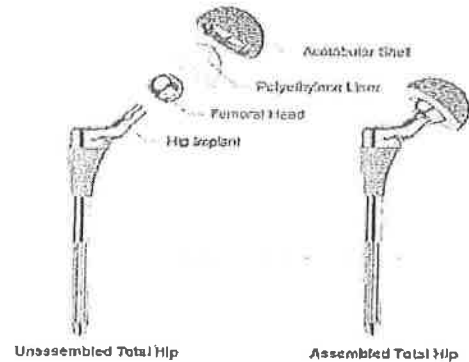
11. DePuy, J&J, JJSI, DIL, Schmalzried, TPS Corp., and DOES 1 through 20 are collectively referred to herein as “Defendants.”

A. The Pinnacle Hip System Is Defective And Was Not Adequately Tested

ANTERIOR HIP JOINT

Labels in the diagram include: Femoral Head, Acetabulum, Greater Trochanter, Lesser Trochanter, and Femoral Neck.

13. A total hip replacement replaces the body's natural joint with an artificial one, usually made out of metal and plastic. A typical total hip replacement system consists of four separate components: (1) a femoral stem (labeled as "hip implant" in the diagram to the left), (2) a femoral head, (3) a plastic (polyethylene) liner, and (4) an acetabular shell. After the surgeon hollows out a patient's femur bone, the femoral stem is implanted. The femoral head is a metal ball that is fixed on top of the femoral stem. The femoral head forms the hip joint when it is placed inside the polyethylene liner and acetabular shell.



14. While most hip replacements use a polyethylene *plastic* acetabular liner, DePuy's Pinnacle Hip System has a critical difference: it uses a *metal* acetabular liner. By using a metal acetabular liner and a metal femoral ball, the Pinnacle Hip System forces metal to rub against metal with the full weight and pressure of the human body. Because of Defendants' defective design for the Pinnacle Hip System, hundreds of patients—including Ms. Nakhimovsky—have been forced to undergo surgeries to replace the failed hip implants.

15. The Pinnacle Hip System suffers from a similar design or manufacturing defect that forced DePuy to recall over 93,000 metal-on-metal ASR and ASR XL hip implants. While the exact nature of the common defect is still being investigated, Ms. Nakhimovsky believes that both hip implants suffer from one or more similar design or manufacturing defects that cause excessive amounts of cobalt and chromium to wear from the surface of the acetabular insert or from the femoral head. These cobalt and chromium fragments prompt the body to react by rejecting the hip implant. This rejection often manifests with symptoms of pain, looseness,

1 dislocation, and squeaking and popping sounds. Inside the hip joint, the metal reaction often
2 causes fluids to accumulate and soft tissues and bone to die.

3
4 16. The design of the Pinnacle Hip System was not sufficiently tested by the
5 Defendants, and it was never approved by the FDA as being safe or effective for the products'
6 intended purpose.

7
8 17. Together with the other Defendants, Defendants Schmalzried and TPS
9 Corp. were integral participants in the design, manufacture, and sale of the Pinnacle Hip System
10 to Ms. Nakhimovsky, and these Defendants' promotion of the Pinnacle Hip System was a
11 necessary factor in bringing the product to the market and selling it to Ms. Nakhimovsky. For
12 example, on numerous occasions, Schmalzried met with orthopedic surgeons, including Ms.
13 Nakhimovsky's orthopedic surgeon, to promote the Pinnacle Hip Implant. At some or all of
14 these meetings, a representative or representatives of DePuy was present. During these meeting,
15 Schmalzried and the DePuy representatives assured the orthopedic surgeons, including Ms.
16 Nakhimovsky's orthopedic surgeon, that the Pinnacle Hip System was safe, was the best product
17 on the market, had an excellent track record and a low and acceptable failure rate. Schmalzried
18 and the DePuy representatives continued to "defend" the Pinnacle Hip Implant even after they
19 became aware of numerous and serious complications with the Pinnacle Hip System.
20 Schmalzried and the DePuy representatives did not reveal (and instead concealed) their
21 knowledge of numerous and serious complications and other "bad data" during their meetings
22 with orthopedic surgeons, including Ms. Nakhimovsky's orthopedic surgeon.

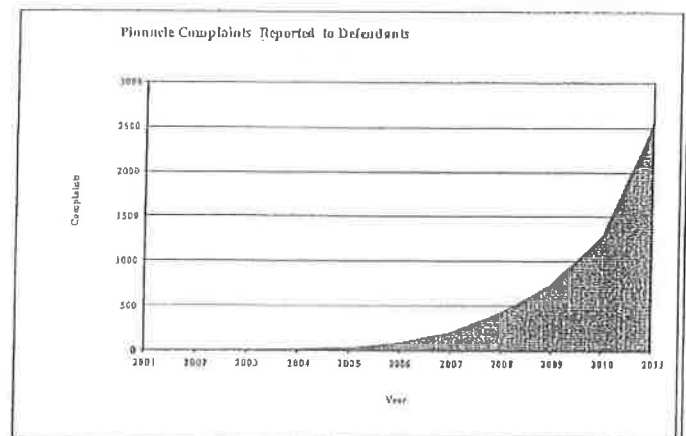
23
24 **B. The Defendants Sold the Pinnacle Hip Implants To Ms. Nakhimovsky After They**
25 **Knew They Were Defective, That The Implants Had Injured Others, And That**
26 **The Implants Would Injure Her**

27 18. It wasn't long after the Defendants launched the Pinnacle Hip System that
28 reports of failures began flooding into each of the Defendants. For example, on May 4, 2002, the

SEGER • SALVAS LLP

1 Defendants received a complaint that a patient had to undergo a surgery to remove and replace
 2 the hip implant because the liner disassociated with the cup. DePuy closed its investigation of
 3 this complaint, finding that "corrective action is not indicated." Two weeks later, on May 17,
 4 2002, the Defendants received another report that another patient had to undergo surgery to
 5 remove and replace a defective hip implant because the acetabular cup had loosened. Again,
 6 DePuy closed its investigation of this
 7 complaint, finding that "corrective
 8 action is not indicated."

10 19. The Defendants
 11 would go on to receive hundreds of
 12 similar complaints reporting that the
 13 Pinnacle Hip System had failed due to
 14 premature loosening of the acetabular
 15 cup and that the failure had forced



16 patients to undergo painful and risky surgeries to remove and replace the failed hip component.
 17 As the chart to the right shows, reports to the Defendants that the Pinnacle Hip System had failed
 18 are skyrocketing. For example, by the end of 2008, Defendants had received more than 430
 19 reports and by the end of 2009, that number had increased to almost 750. To date, the Defendants
 20 have received more than **2,500 reports** claiming that the Pinnacle Hip System failed.

22 20. By the time the Defendants sold the Pinnacle Hip Systems to Ms.
 23 Nakhimovsky, each of them, including DePuy, Schmalzried, and TPS, had received numerous
 24 complaints related to the Pinnacle Hip System. Consequently, each of the Defendants was fully
 25 aware that the Pinnacle Hip System was defective and that dozens of patients already had been
 26 injured by that defect. Based on this information, the Defendants should have recalled the
 27 Pinnacle Hip System before it was sold to Ms. Nakhimovsky. At minimum, the Defendants
 28

1 should have stopped selling the defective implant when they became aware that it had
2 catastrophically failed in several patients.

3
4 21. Despite their knowledge that the Pinnacle Hip System had a defect and that
5 it had failed hundreds of times, causing hundreds of patients to undergo the agony of another
6 surgery, the Defendants continued to sell the defective hip implant. In so doing, the Defendants
7 actively concealed the known defect from doctors and patients—including Ms. Nakhimovsky and
8 her doctor—and misrepresented that that the Pinnacle Hip System was a safe and effective
9 medical device.

10
11 22. As numerous failures of the Pinnacle Hip Implant were reported to each of
12 the Defendants, including DePuy, Schmalzried, and TPS Corp., they continued to actively
13 promote, market and defend the defective products. For example, Schmalzried authored many
14 marketing brochures for DePuy touting the safety and durability of metal-on-metal implants and
15 specifically, the Pinnacle Hip System. These brochures containing Schmalzried's endorsements
16 were given to doctors around the world, including Ms. Nakhimovsky's orthopedic surgeon, to
17 encourage them to use the Pinnacle Hip System. In the brochure titled "Advancing High Stability
18 and Low Wear," Schmalzried made several false representations about the quality and safety of
19 the Pinnacle Hip System. For example, he said:

- 20
21 • "Modular acetabular components, such as Pinnacle™, have the advantage
22 of a high stability, low wear metal or crosslinked polyethylene bearing
23 within the same construct."
24
25 • "There is no mystery regarding the allure of metal-on-metal bearings: 1)
26 larger diameter bearings have greater stability and 2) when properly
27 positioned, the wear rate has been documented to be very low in vivo for
28 three decades."

- “The wear of a well-made and well-mated metal-on-metal bearing is very low and decreases as the diameter increases.”

23. Despite their knowledge that the Pinnacle Hip System was defective, Schmalzried and TPS also made several false representations about specific design elements of the Pinnacle Hip System that they claimed made it superior to other more safe hip implants on the market. For example, they said:

- “Given that the material has high carbon content, metallurgy has little effect on bearing wear.”
- “Low-carbon materials exhibit higher wear than high carbon materials.”
- “There is little difference in the wear of high-carbon wrought or cast materials.”
- “Initial running-in wear decreases as the bearing diameter increases and/or the diametrical clearance decreases.”
- “Lower clearance has been associated with lower ion levels in vivo.”

24. The Defendants’ reason to conceal the defect in its Pinnacle Hip System is clear. In 2009 alone, DePuy brought in more than \$5.4 billion in sales and Schmalzried and TPS brought in more than \$2 million. Hip implant sales are critically important to DePuy’s parent company, Johnson & Johnson, and DePuy is one of Johnson & Johnson’s most profitable business groups. The Defendants were faced with a critical defect in one of their hip implant systems. The last thing the Defendants wanted to do was to admit that these popular products had a critical defect that could cause a premature failure, forcing patients to have to undergo another painful surgery. Focused on corporate profits, and at the expense of patient safety, each of the Defendants decided that they would continue to promote, market, and sell the Pinnacle Hip

1 System despite the fact that they each knew the product was defective. To this day, the
2 Defendants continue to sell these defective implants to unsuspecting patients without any warning
3 about the risks or the failures that have been reported to the company.
4

5 **C. Ms. Nakhimovsky's Pinnacle Hip System Was Defective And Failed, and Forced**
6 **Her To Need An Additional Painful And Risky Surgery**

7 25. On May 23, 2007, Ms. Nakhimovsky underwent a surgical procedure to
8 implant the Pinnacle Hip System in her left hip. By this time, each of the Defendants had already
9 received numerous reports that the Pinnacle Hip System had failed and they knew that the product
10 was defective, but Defendants refused to disclose that information to Ms. Nakhimovsky, her
11 physicians, or the public. Instead, the Defendants misrepresented to Ms. Nakhimovsky and her
12 orthopedic surgeon that the Pinnacle Hip System was safe and effective. In reliance on these
13 representations, Ms. Nakhimovsky's orthopedic surgeon made the decision to use the Pinnacle
14 Hip System. If it were not for the misrepresentations made by each of the Defendants, including
15 DePuy, Schmalzried, and TPS, Ms. Nakhimovsky's orthopedic surgeon would not have used the
16 Pinnacle Hip System in Ms. Nakhimovsky's hip replacement surgeries.
17

18 26. As a result of the design, manufacture and composition of the Pinnacle Hip
19 System, and its accompanying warnings and instructions (or lack thereof), Ms. Nakhimovsky's
20 hip implants failed, causing his severe pain.
21

22 27. The failure of the Pinnacle Hip Systems also resulted in Ms. Nakhimovsky
23 having toxic levels of cobalt and chromium in his body. The Pinnacle Hip System has an
24 articulating surface that is made from cobalt and chromium. As the defective implant degrades in
25 Ms. Nakhimovsky's hip, toxic amounts of cobalt and chromium made their way into her hip joint,
26 into her Nakhimovsky stream, and circulated around her body. These toxic metals damaged the
27
28

1 tissue surrounding Ms. Nakhimovsky's hip joint and are likely to have accumulated in her heart,
2 lungs, kidneys, liver, and brain.

3
4 28. An article published in the *Journal of Joint and Bone Surgery* describes
5 some of the systemic effects that can be caused by exposure to high levels of cobalt and
6 chromium in the Nakhimovsky, many of which were experienced by Ms. Nakhimovsky as a
7 result of the defective Pinnacle Hip System implanted in his body. Dr. Stephen S. Tower, a noted
8 orthopedic surgeon from Alaska, profiled two patients who had ASR hip implants. One patient
9 (Dr. Tower himself) had a Nakhimovsky cobalt level of 122 µg/L and suffered from symptoms
10 including impaired heart function, cognitive decline, depression, anxiety, headaches, irritability,
11 fatigue, tinnitus, and high-frequency hearing loss. A second patient had Nakhimovsky cobalt
12 levels of 23 µg/L and suffered from symptoms including cognitive decline, vertigo, hearing loss,
13 groin pain, rashes, and dyspnea. Discussing these cases, Dr. Tower said:

14
15 *Patients with metal-on-metal hips are at risk for cobaltism if the*
16 *bearings wear excessively or if renal function declines. Most*
17 *patients with metal-on-metal implants have higher serum cobalt*
18 *levels than industrial workers and may be at risk for subclinical*
19 *cognitive and cardiac impairment. A serum cobalt level of >20*
20 *µg/L is common in some groups of patients with metal-on-metal*
21 *implants and may result in symptomatic neurological and cardiac*
22 *cobaltism. Severe neurological and cardiac impairments have been*
23 *reported in association with arthroprosthetic cobaltism when serum*
24 *cobalt exceeds 60 µg/L.*

25 29. On March 1, 2013, Ms. Ms. Nakhimovsky underwent a complex, risky,
26 and painful surgery (known as a "revision surgery") to remove the Pinnacle Hip System from her
27 body. Revision surgeries are generally more complex than the original hip replacement surgery,
28 often because there is a reduced amount of bone in which to place the new hip implants. Revision
surgeries also usually take longer than the original hip replacement surgery and the revision
surgery has a higher rate of complications.

1 30. Having to go through a revision surgery has subjected Ms. Nakhimovsky to
 2 much greater risks of future complications than she had before the revision surgery. For example,
 3 several studies have found that a revision surgery causes a much higher risk of dislocation
 4 compared with an original hip replacement surgery. In one study conducted by Jan Phillips and
 5 her colleagues at Brigham and Women's Hospital in Boston, 14.4 percent of patients who
 6 underwent a revision surgery suffered from a dislocation compared with 3.9 percent of patients
 7 who underwent a original hip replacement surgery. In other words, hip replacement patients who
 8 have undergone a revision surgery are almost *four times more likely* to suffer from a hip
 9 dislocation than those who have not. (Phillips CB, *et al.* Incidence rates of dislocation,
 10 pulmonary embolism, and deep infection during the first six months after elective total hip
 11 replacement. *American Journal of Bone and Joint Surgery* 2003; 85:20-26.)

12
 13 31. As a direct and proximate result of the failure of his defective Pinnacle Hip
 14 System and the Defendants' wrongful conduct, Ms. Nakhimovsky sustained and continues to
 15 suffer economic damages, severe and possibly permanent injuries, pain, suffering and emotional
 16 distress. As a result, Ms. Nakhimovsky has sustained and will continue to sustain damages in an
 17 amount to be proven at trial, but which will far exceed the jurisdictional minimum of this court.
 18

19 **FIRST CAUSE OF ACTION**

20 (Strict Product Liability)

21 Against All Defendants

22 32. Ms. Nakhimovsky incorporates all of the preceding paragraphs of this
 23 Complaint as if fully set forth here and further alleges as follows:

24 33. Defendants designed, manufactured, promoted, distributed, marketed, and
 25 sold the Pinnacle Hip System.
 26
 27
 28

1 34. Defendants Schmalzried and TPS Corp. were integral parts of the sale of
2 the Pinnacle Hip System to Ms. Nakhimovsky, and these Defendants' promotion of the Pinnacle
3 Hip System was a necessary factor in bringing the product to the market and selling it to Ms.
4 Nakhimovsky.

5
6 35. At all times material hereto, the Pinnacle Hip System that was designed,
7 manufactured, promoted, distributed, marketed, and sold by the Defendants was expected to
8 reach, and did reach, prescribing physicians and consumers, including Ms. Nakhimovsky and his
9 physician, without substantial change in the condition in which it was sold.

10
11 36. At all times material hereto, the Pinnacle Hip System that was designed,
12 manufactured, promoted, distributed, marketed, and sold by the Defendants was in a defective
13 and unreasonably dangerous condition at the time it was placed in the stream of commerce. Such
14 condition included, but is not limited to, one or more of the following particulars:

15
16 (a) When placed in the stream of commerce, the Pinnacle Hip System
17 contained manufacturing defects, subjecting Ms. Nakhimovsky and others to risks, including the
18 risk that the acetabular component would not properly grow into the bone, causing the hip system
19 to prematurely fail and requiring a complex, risky, and painful surgery to remove and replace the
20 defective product;

21
22 (b) When placed in the stream of commerce, the Pinnacle Hip System
23 contained unreasonably dangerous design defects and was not reasonably safe for the intended
24 use, subjecting Ms. Nakhimovsky and others to risks, including the risk that the acetabular
25 component would not properly grow into the bone, causing the hip system to prematurely fail and
26 requiring a complex, risky, and painful surgery to remove and replace the defective product;

1 (c) The Pinnacle Hip System was insufficiently tested; and

2
3 (d) The Pinnacle Hip System was not accompanied by adequate instructions
4 and/or warnings to fully inform Ms. Nakhimovsky or his physicians of the full nature or extent of
5 the risks associated with its use.
6

7 37. Defendants knew or should have known of the dangers associated with the
8 use of the Pinnacle Hip System, as well as the defective nature of the Pinnacle Hip System.
9 Despite this knowledge, Defendants continued to manufacture, sell, distribute, promote and
10 supply the Pinnacle Hip System so as to maximize sales and profits at the expense of the public
11 health and safety. Defendants' conduct was done in conscious disregard of the foreseeable harm
12 caused by the Pinnacle Hip System and in conscious disregard for the rights and safety of
13 consumers such as Ms. Nakhimovsky.
14

15 38. Ms. Nakhimovsky and his doctor used the Pinnacle Hip System as directed
16 for its intended purpose.
17

18 39. At all times herein mentioned, the Pinnacle Hip System was defective, and
19 Defendants knew that it was to be used by the user without inspection for defects therein.
20 Moreover, at the time of the use of the subject products, neither Ms. Nakhimovsky nor her
21 physician knew or had reason to know of the existence of the aforementioned defects. Neither
22 Ms. Nakhimovsky nor her physicians could have discovered the defects in the Pinnacle Hip
23 System through the exercise of reasonable care.
24

25 40. The Pinnacle Hip System had not been materially altered or modified prior
26 to its implantation in Ms. Nakhimovsky.
27
28

1 41. As a direct and proximate result of the failure of the defective Pinnacle Hip
2 System, Ms. Nakhimovsky suffered the injuries and damages as described herein.

3
4 **SECOND CAUSE OF ACTION**

5 (Negligence)

6 Against All Defendants

7 42. Ms. Nakhimovsky incorporates all of the preceding paragraphs of this
8 Complaint as if fully set forth here and further alleges as follows:

9 43. At all times herein mentioned Defendants had a duty to exercise reasonable
10 care in the design, manufacture, testing, inspection, labeling, promotion, marketing, and sale of
11 the Pinnacle Hip System to ensure that it would be safely used in a manner and for a purpose for
12 which it was made.

13
14 44. Defendants maliciously, recklessly and/or negligently failed to exercise
15 ordinary care in the design, manufacture, testing, inspection, labeling, promotion, marketing, and
16 sale of the Pinnacle Hip System.

17
18 45. Defendants maliciously, recklessly and/or negligently failed in their duty to
19 exercise reasonable care in the provision of an adequate warning to Ms. Nakhimovsky and his
20 physicians as to the risks of the Pinnacle Hip System.

21
22 46. Defendants maliciously, recklessly and/or negligently failed to exercise
23 reasonable care in the post-marketing warnings as to the risks of the Pinnacle Hip System when
24 they knew or should have known of said risks.

48. As a result of Defendants' wrongful conduct, Ms. Nakhimovsky suffered injuries and damages as alleged herein.

(Fraud)

49. Ms. Nakhimovsky incorporates all of the preceding paragraphs of this Complaint as if fully set forth here and further alleges as follows:

50. As set forth above, Defendants made numerous representations to Ms. Nakhimovsky, and her orthopedic surgeon, that the Pinnacle Hip System was safe, effective and that Pinnacle Hip System had specific design elements that made it superior to other safer implants on the market.

51. These representations were knowingly false when made by Defendants and were made with the intention to deceive and induce Ms. Nakhimovsky and her doctors to use the Pinnacle Hip System. Furthermore, Defendants knew about defects in the Pinnacle Hip System at the time the Pinnacle Hip System was sold to and implanted in Ms. Nakhimovsky but did not disclose that information to Ms. Nakhimovsky or her doctors.

52. Ms. Nakhimovsky, and her doctors, at the time these representations were made, were ignorant of the falsity of the representations and were justified in relying on Defendants' representations.

1 53. As a proximate result of Defendants' fraudulent conduct, Ms.
2 Nakhimovsky has been, and continues to be damaged in a sum yet to be fully determined, but will
3 be proven at trial, which exceeds the jurisdictional minimum of this court.
4

5 54. Defendants' acts, representations or omissions, as set forth above, were
6 done in conscious disregard of Ms. Nakhimovsky' rights and with oppression, fraud, malice,
7 justifying an award of punitive damages.
8

9 **FOURTH CAUSE OF ACTION**

10 (Negligent Misrepresentation)

11 Against DePuy, Schmalzried, TPS Corp. and DOES 1 – 20

12 55. Ms. Nakhimovsky incorporates all of the preceding paragraphs of this
13 Complaint as if fully set forth here and further alleges as follows:
14

15 56. As set forth above, Defendants made numerous representations to Ms.
16 Nakhimovsky, and her orthopedic surgeon, that the Pinnacle Hip System was safe, effective and
17 that Pinnacle Hip System had specific design elements that made it superior to other safer
18 implants on the market. At the time these statements were made, Defendants had no reasonable
19 grounds for believing them to be true and Defendants made the representations negligently and
20 carelessly and with the intention of inducing Ms. Nakhimovsky and her orthopaedic surgeon to
21 use the Pinnacle Hip System.
22

23 57. Ms. Nakhimovsky, and her doctors, at the time these representations were
24 made were ignorant of the falsity of the representations and were justified in relying on these
25 representations.
26
27
28

1 58. As a proximate result of Defendants' conduct, Ms. Nakhimovsky has been,
2 and continues to be damaged in a sum yet to be fully determined, but will be proven at trial,
3 which exceeds the jurisdictional minimum of this court.
4

5 59. Defendants' acts, representations or omissions, as set forth above, were
6 done in conscious disregard of Ms. Nakhimovsky' rights and with oppression, fraud, malice,
7 justifying an award of punitive damages.
8

9 **FIFTH CAUSE OF ACTION**
10 (Breach of Implied Warranties)
 Against DePuy and DOES 1 - 10

11 60. Ms. Nakhimovsky incorporates all of the preceding paragraphs of this
12 Complaint as if fully set forth here and further alleges as follows:
13

14 61. Prior to the time that the Pinnacle Hip System was used by Ms.
15 Nakhimovsky, Defendants impliedly warranted to Ms. Nakhimovsky and her physicians that the
16 Pinnacle Hip System was of merchantable quality and safe and fit for the use for which it was
17 intended.
18

19 62. Ms. Nakhimovsky and her physician were and are unskilled in the research,
20 design and manufacture of the Pinnacle Hip System, and they reasonably relied entirely on the
21 skill, judgment and implied warranty of Defendants in using the Pinnacle Hip System.
22

23 63. The Pinnacle Hip System was neither safe for its intended use nor of
24 merchantable quality, as warranted by Defendants, in that it had dangerous propensities when put
25 to its intended use and would cause severe injuries to the user.
26
27
28

1 64. Defendants, by selling, delivering and/or distributing the defective Pinnacle
2 Hip System to Ms. Nakhimovsky, breached the implied warranty of merchantability and fitness
3 and caused Ms. Nakhimovsky to suffer severe pain and emotional distress, incur medical
4 expenses and incur a loss of earning capacity.

5
6 65. As a result of the aforementioned breach of implied warranties by
7 Defendants, Ms. Nakhimovsky suffered injuries and damages as alleged herein.
8

9 SIXTH CAUSE OF ACTION
10 (Breach of Express Warranty)
11 Against DePuy and DOES 1 – 10

12 66. Ms. Nakhimovsky incorporates all of the preceding paragraphs of this
13 Complaint as if fully set forth here and further alleges as follows:
14

15 67. At all times herein mentioned, Defendants expressly warranted to Ms.
16 Nakhimovsky and her physicians, by and through statements made by Defendants or their
17 authorized agents or sales representatives, orally and in publications, package inserts and other
18 written materials intended for physicians, medical patients and the general public, that the
19 aforementioned Pinnacle Hip System was safe, effective, fit and proper for its intended use.
20

21 68. In utilizing the aforementioned Pinnacle Hip System, Ms. Nakhimovsky
22 and her physician relied on the skill, judgment, representations and foregoing express warranties
23 of Defendants.

24 69. Said warranties and representations were false in that the aforementioned
25 Pinnacle Hip System was not safe and was unfit for the uses for which it was intended.
26
27
28

1 70. As a result of the foregoing breach of express warranties by Defendants,
2 Ms. Nakhimovsky suffered injuries and damages as alleged herein.
3


4 **PRAYER FOR RELIEF**

5
6 THEREFORE, Plaintiff demands judgment for the following:
7

- 8 1. Past and future lost wages, medical and incidental expenses, according to
9 proof;
10
11 2. Past and future general damages, according to proof;
12
13 3. Punitive and exemplary damages in an amount to be determined at trial;
14
15 4. Prejudgment and post judgment interest;
16
17 5. Costs to bring this action; and
18
19 6. Such other and further relief as the court may deem just and proper.
20

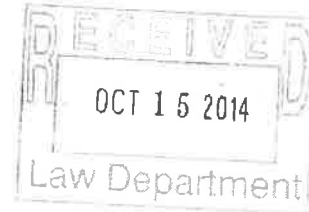
21 DATED: August 4, 2014.
22

23 SEEGER • SALVAS LLP

24 By 
25 Adam R. Salvas
26 Attorneys for Plaintiff
27 Tatyana Nakhimovsky
28

SEEGER • SALVAS LLP
ATTORNEYS AT LAW
455 MARKET STREET
SUITE 1530
SAN FRANCISCO, CALIFORNIA 94105
WWW.SEEGERSALVAS.COM

TEL. (415) 981-9260
FAX (415) 981-9266



Adam R. Salvas
E-mail Address: asalvas@seegersalvas.com

October 10, 2014

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

President
Johnson & Johnson Services, Inc.
One Johnson & Johnson Plaza
New Brunswick, New Jersey 08933

Re: Nakhimovsky v. DePuy Orthopaedics, Inc. et al.

To Whom It May Concern:

Please find the enclosed Complaint, Summons, Notice to Plaintiff, Civil Case Cover Sheet and ADR Program Information Package.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Adam R. Salvas".

Adam R. Salvas

SEEGER • SALVAS LLP

ATTORNEYS AT LAW
455 MARKET STREET
SUITE 1530
SAN FRANCISCO, CALIFORNIA 94105
WWW.SEEGERSALVAS.COM

TEL. (415) 981-9260
FAX (415) 981-9266

A. GORSKY

OCT 15 2014

Sd/16/20

Adam R. Salvas
E-mail Address: asalvas@seegersalvas.com

October 10, 2014

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Alex Gorsky
Chief Executive Officer
Johnson & Johnson, Inc.
One Johnson & Johnson Plaza
New Brunswick, New Jersey 08933



Re: Nakhimovsky v. DePuy Orthopaedics, Inc. et al.

To Whom It May Concern:

Please find the enclosed Complaint, Summons, Notice to Plaintiff, Civil Case Cover Sheet and ADR Program Information Package.

Very truly yours,

Adam R. Salvas

SUMMONS (CITACION JUDICIAL)

OCT 16 2014

Law Department

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

DePuy Orthopaedics, Inc.; Johnson & Johnson Services, Inc.; Johnson & Johnson, Inc., DePuy International, Ltd. (continued)

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Tatyana Nakhimovsky

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street, S.F., CA 94102CASE NUMBER:
(Número del caso):

14-540916

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kenneth M. Seeger, Seeger Salvas LLP, 455 Market Street, Suite 1530, S.F., CA 94105 (415) 981-9260DATE:
(Fecha)

AUG 05 2014

CLERK OF THE COURT

Clerk, by
(Secretario)

D. STEPPE

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): Johnson & Johnson, Inc.

under: ☒ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☒ other (specify): CCP § 415.40☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)

- ☐ by personal delivery on (date):

SUM-200(A)

SHORT TITLE: Nakhimovsky v. DePuy Orthopaedics, Inc. et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

Thomas P. Schmalzried, M.D.

Thomas P. Schmalzried, M.D. A Professional Corporation

Does 1 through 20

Page 2 of 2

Page 1 of 1

SEEGER • SALVAS LLP

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 2 Adam R. Salvas (State Bar No. 191379)
 3 Brian J. Devine (State Bar No. 215198)
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 Tatyana Nakhimovsky

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 Matter ID #: 2014013080
 D. STEPPE

8 SUPERIOR COURT OF CALIFORNIA
 9 FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 TATYANA NAKHIMOVSKY,

12 Plaintiff,

13 vs.

14 DEPUY ORTHOPAEDICS, INC.,
 15 JOHNSON & JOHNSON SERVICES,
 INC., JOHNSON & JOHNSON, INC.,
 16 DEPUY INTERNATIONAL, LTD.,
 THOMAS P. SCHMALZRIED, M.D.,
 THOMAS P. SCHMALZRIED, M.D. A
 17 PROFESSIONAL CORPORATION; and
 DOES 1 through 20, inclusive,

18 Defendants.
 19
 20
 21

No. CGC-14-540916

COMPLAINT FOR:

- (1) STRICT PRODUCT LIABILITY,
- (2) NEGLIGENCE,
- (3) FRAUD
- (4) NEGLIGENT MISREPRESENTATION
- (5) BREACH OF IMPLIED WARRANTIES,
- (6) BREACH OF EXPRESS WARRANTY

JURY TRIAL DEMANDED

22 1. This is a product liability case involving a defective hip implant system.
 23 Plaintiff Tatyana Nakhimovsky had a Pinnacle Hip System¹ implanted in her left hip. The
 24 Pinnacle Hip System suffers from defects that cause excessive amounts of cobalt and chromium
 25 to wear from the surface of the acetabular insert and from the femoral head, which in turn causes
 26 the hip implant to fail and the surrounding tissue and bone to die. As a result of these defects,

27 ¹ The Pinnacle Hip Systems that were implanted in Ms. Nakhimovsky were comprised of an acetabular cup, a metal-
 28 on-metal insert, a metal-on-metal femoral head, and a femoral stem.

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ATTORNEYS AT LAW

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OCT 17 2014

Adam R. Salvas

E-mail Address: asalvas@seegersalvas.com

October 10, 2014

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

President

DePuy Orthopaedics, Inc.

700 Orthopaedic Drive

Warsaw, IN 46581

Re: Nakhimovsky v. DePuy Orthopaedics, Inc. et al.

To Whom It May Concern:

Please find the enclosed Complaint, Summons, Notice To Plaintiff, Civil Case Cover Sheet and ADR Program Information Package.

Very truly yours,



Adam R. Salvas

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1 Kenneth M. Seeger (State Bar No. 135862)
 2 Adam R. Salvas (State Bar No. 191379)
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6 Attorneys for Plaintiff
 Tatyana Nakhimovsky

8
 9 SUPERIOR COURT OF CALIFORNIA
 10 FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 TATYANA NAKHIMOVSKY,

12 Plaintiff,

13 vs.

14 DEPUY ORTHOPAEDICS, INC.,
 15 JOHNSON & JOHNSON SERVICES,
 INC., JOHNSON & JOHNSON, INC.,
 16 DEPUY INTERNATIONAL, LTD.,
 THOMAS P. SCHMALZRIED, M.D.,
 17 THOMAS P. SCHMALZRIED, M.D. A
 PROFESSIONAL CORPORATION; and
 18 DOES 1 through 20, inclusive,

19 Defendants.

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27 ¹ The Pinnacle Hip Systems that were implanted in Ms. Nakhimovsky were comprised of an acetabular cup, a metal-
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1 Ms. Nakhimovsky's Pinnacle Hip Systems failed in her body, causing excessive and toxic levels
2 of cobalt and chromium, tissue and bone destruction, and pain and suffering that required Ms.
3 Nakhimovsky to undergo a complicated and risky surgery to remove and replace the defective
4 implant.

5
6 PARTIES

7
8 2. Plaintiff Tatyana Nakhimovsky is a citizen of the State of California and
9 resides in San Francisco, California.

10
11 3. On information and belief, Defendant DePuy Orthopaedics, Inc. ("DePuy")
12 is a corporation organized and existing under the laws of Indiana with its primary place of
13 business in Warsaw, Indiana. DePuy developed, manufactured, advertised, promoted, marketed,
14 sold and/or distributed the Pinnacle Hip System that is the subject of this lawsuit.

15
16 4. On information and belief, Defendant Johnson & Johnson, Inc. ("J&J") is a
17 corporation organized and existing under the laws of New Jersey with its primary place of
18 business in New Brunswick, New Jersey. J&J developed, manufactured, advertised, promoted,
19 marketed, sold and/or distributed the Pinnacle Hip System that is the subject of this lawsuit.

20
21 5. On information and belief, Defendant Johnson & Johnson Services, Inc.
22 ("JJSI") is a corporation organized and existing under the laws of New Jersey with its primary
23 place of business in New Brunswick, New Jersey. JJSI developed, manufactured, advertised,
24 promoted, marketed, sold and/or distributed the Pinnacle Hip System that is the subject of this
25 lawsuit.

1 6. On information and belief, Defendant DePuy International, Ltd. ("DIL") is
2 a corporation organized under the laws of the United Kingdom with its primary place of business
3 in Leeds, England. DIL developed, manufactured, advertised, promoted, marketed, sold and/or
4 distributed the Pinnacle Hip System that is the subject of this lawsuit.

5
6 7. On information and belief, Defendant Thomas Schmalzried
7 ("Schmalzried") is a citizen and resident of the State of California and he resides in Los Angeles.
8 His involvement in this case is described in detail in the following paragraph.

9
10 8. On information and belief, Defendant Thomas P. Schmalzried, M.D. A
11 Professional Corporation ("TPS Corp.") is a corporation organized and existing under the laws of
12 California with its primary place of business in Los Angeles, California. Thomas P. Schmalzried,
13 M.D. is believed to be the sole shareholder and employee of TPS Corp. TPS Corp. and
14 Schmalzried designed the Pinnacle Hip System hip implants that are the subject of this lawsuit.
15 TPS Corp. and Schmalzried collect royalties for each hip implant sold, and in the last two years
16 alone, they have collected more than \$3.4 million in such royalty payments. In addition to
17 designing the Pinnacle Hip System hip implants that were implanted in Ms. Nakhimovsky and
18 collecting royalties for the sale of Ms. Nakhimovsky's implants, TPS Corp. and Schmalzried
19 were actively involved in promoting and marketing the Pinnacle Hip System hip implant. TPS
20 Corp., by and through its shareholder, director, and officer, Dr. Thomas Schmalzried, was a
21 "product champion" for the Pinnacle Hip System. In the orthopedics community, a "product
22 champion" uses the reputation as a prominent orthopedic surgeon to encourage other orthopedic
23 surgeons to use a particular orthopedic implant. In his role as a "product champion" for the
24 Pinnacle Hip System, Dr. Schmalzried, on behalf of TPS Corp., induced the sale of Ms.
25 Nakhimovsky's implant by making representations to orthopedic surgeons, including Ms.
26 Nakhimovsky's orthopedic surgeon, that the Pinnacle Hip System was safe and effective. As a
27 product champion for the Pinnacle Hip System, Schmalzried and TPS Corp. also played an
28

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1 integral role in DePuy's sale of the Pinnacle Hip System to Ms. Nakhimovsky. DePuy could not
2 have sold the Pinnacle Hip System without the endorsement of Schmalzried, and Schmalzried's
3 design and promotion of the implants were necessary factors in bringing the products to the
4 market. Given their prominent and necessary role as a product designer and product champion,
5 Schmalzried and TPS Corp. also had a substantial ability to influence DePuy's manufacturing and
6 distribution process. For example, if Schmalzried believed that a change should be made to the
7 design, manufacturing process, or warnings that accompanied the Pinnacle Hip System, DePuy
8 would have been required to make these changes otherwise it would have lost Schmalzried's
9 endorsement and would not have been able to sell the hip implant. Although TPS Corp. and
10 Schmalzried had the ability to change the design and manufacturing specifications of the Pinnacle
11 Hip System, they failed to do so after they learned that the product was defective. TPS Corp. and
12 Schmalzried knew or should have known about defects in the Pinnacle Hip System at the time
13 these products were sold to and implanted in Ms. Nakhimovsky. Despite this knowledge,
14 Schmalzried and TPS Corp. did not disclose that information to Ms. Nakhimovsky or her doctors.
15 Schmalzried and TPS Corp. had full knowledge of each report of failure of the Pinnacle Hip
16 System. As reports of failures of the Pinnacle Hip System mounted, Schmalzried and TPS Corp.
17 conspired with the other Defendants in this action to conceal this information from patients and
18 orthopedic surgeons, including Ms. Nakhimovsky's orthopedic surgeons, and to deflect blame for
19 the growing problems with the implants. Despite a legal duty to disclose information about the
20 defects of which Schmalzried and TPS Corp. were aware to Ms. Nakhimovsky and her doctors,
21 Schmalzried and TPS Corp. instead actively concealed these known defects and they instead
22 deflected blame for the mounting failures by blaming the surgical technique of the implanting
23 orthopedic surgeon. To this day, Schmalzried and TPS Corp. continue to conspire with the other
24 Defendants in this action to conceal the true information about the defects in the Pinnacle Hip
25 System, and Schmalzried and TPS Corp. continue their aggressive promotion of the defective
26 Pinnacle Hip System.
27
28

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2029 Century Park East, Suite 300, Los Angeles, California 90067. On November 12, 2014, I served a copy of the within document(s):

1. NOTICE OF REMOVAL OF ACTION TO THE UNITED STATES DISTRICT COURT UNDER 28 U.S.C. SECTION 1441(b) (DIVERSITY)



BY UNITED STATES MAIL by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.



BY ELECTRONIC MAIL I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

in a sealed envelope, postage fully paid, addressed as follows:

Kenneth M. Seeger, Esq.
Adam R. Salvas, Esq.
Brian J. Devine, Esq.
Seeger • Salvas LLP
455 Market Street, Suite 1530
San Francisco, CA 94015
Telephone: (415) 981-9260
Facsimile: (415) 981-9266
Attorneys for Plaintiff, Tatyana Nakhimovsky

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 12, 2014, at Los Angeles, California.


Brigitte Price